

Congress of the United States  
Washington, DC 20515

1050

December 7, 2017

The Honorable Ajit Pai, Chairman  
Federal Communications Commission  
445 12th St. S.W.  
Washington, DC 20554

Dear Chairman Pai,

As Members of Congress who represent Northern California, home to the innovation capital of the world, we write to strongly oppose the "Restoring Internet Freedom Order" WC Docket 17-108. Having reviewed the proposal you circulated on November 21st we believe it will irreversibly smother the free and open internet and create a closed gatekeeper regime that will stifle innovation, harm consumers, and suppress free speech. We urge you to remove it from the agenda for the Federal Communications Commission's (FCC) December Open Meeting, and to abandon your ongoing attempts to repeal the judicially approved 2015 Open Internet rules.

The 2015 Open Internet rules were a light-touch, court-approved approach to broadband oversight. It was modeled on long-held principles of nondiscrimination and openness that for decades were supported by both Republican and Democratic FCCs. The codification of these rules in 2015 and affirmation by the court have provided certainty for consumers, investors, innovators, and providers for more than two years, and the virtuous circle has continued to flourish.

By contrast, your proposal, if passed, unravels that certainty and prolific growth. It ensures that broadband providers can block and throttle at a whim. It also threatens innovation at the edge by allowing broadband providers to charge tolls for access to their customers or provide preferential treatment to their own affiliated content, while slowing that of competitors. This is even more concerning in an increasingly consolidated media marketplace. Ever larger vertically integrated providers have even more incentive and ability to leverage their control over consumers and emerging platforms who rely on this essential communication access to grow and access information.

Congress established the FCC to protect consumers, ensure the public interest, and provide rules of the road on our nation's essential communications networks. It is the entity specifically and best designed to accomplish that job. Your proposal eliminates the FCC's authority to act as the cop on the beat to protect consumers in a proactive, flexible manner and entrusts the Federal Trade Commission (FTC) with this responsibility. We believe this is an ill-suited place for communications policymaking as a general matter. The FCC is the expert agency with flexible rulemaking authority in the communications sector which is replete with unusually complex and highly technical challenges. Expertise is essential to ensure appropriate rulemaking and oversight are applied when it is necessary to protect consumers and the public interest.

The FTC, by contrast, has no particular expertise and is an enforcement agency. It therefore cannot provide the full slate of protections needed to protect consumers and others in the internet ecosystem from anticompetitive practices by companies before they happen. It addresses the harm only after the harm has occurred. Net neutrality is designed to keep the gates open to everyone in a forward-looking manner. The FTC can act if a harm has occurred, but without preventive protections to keep barriers to entry low, we will never know who was kept out of the virtuous cycle. By removing the prophylactic rules under FCC authority, your proposal effectively permits and blesses gatekeepers to inhibit competition in the online marketplace.

We are also concerned that your proposal preempts states and localities from adopting their own related consumer protections. This is an ill-advised and potentially illegal action. It undermines the ability for states and localities to respond proactively to the unique problems they face in their communities. The overly broad language also casts doubt on the ability of states and localities to enforce any existing rules and laws to the extent they may implicate broadband.

Finally, we are perplexed by your insistence on moving full speed ahead on this plan when organizations from A to Z continue to oppose it and support the current rules in droves. That list includes over 1,200 start-ups<sup>1</sup>, 200 online companies<sup>2</sup>, over a dozen state Attorneys General<sup>3</sup>, sixty Mayors across the country<sup>4</sup>, 52 civil and human rights organizations<sup>5</sup>, 120,000 libraries<sup>6</sup>, 41 small internet service providers<sup>7</sup>, more than 900 online video creators<sup>8</sup>, and the tens of millions of Americans who continue to weigh in every day. There appear to be only four entities who are actually pleased by your proposal – incumbent ISPs AT&T, Comcast, Verizon, and Charter who stand to gain from a policy that will allow them to police themselves.

By almost any metric, be it the court of public opinion, good public policy, or sound legal analysis your proposal is an unnecessary assault on the open internet as we know it. The 2015 rules in place today have been successful in providing certainty and protection online for those

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<sup>1</sup> Open Letter from Start-Ups for Net Neutrality to Chairman Pai (originally dated April 26, 2017) (<http://www.engine.is/startups-for-net-neutrality/>).

<sup>2</sup> Jacob Kastrenakes, "Reddit, Twitter, and 200 others say ending net neutrality would ruin Cyber Monday," The Verge (Nov. 27, 2017).

<sup>3</sup> Comments of Attorneys General of the State of Illinois, California, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Mississippi, Oregon, Vermont, Washington, and the District of Columbia on the May 18, 2017 Notice of Proposed Rulemaking, In the Matter of Restoring Internet Freedom, WC Docket 17-108 (filed July 17, 2017).

<sup>4</sup> Letter from 60 Mayors, In the Matter of Restoring Internet Freedom, WC Docket 17-108 (filed July 17, 2017).

<sup>5</sup> Comments of Voices for Internet Freedom, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108 (filed July 19, 2017).

<sup>6</sup> Comments of American Association of Libraries, American Library Association, and Chief Officers of State Library Agencies, In the Matter of Restoring Internet Freedom, GN Docket 17-108 (filed July 17, 2017).

<sup>7</sup> Letter from 41 Internet Service Providers to Chairman Pai (June 27, 2017) ([https://www.eff.org/files/2017/06/27/isp\\_letter\\_to\\_fcc\\_on\\_nn\\_privacy\\_title\\_ii.pdf](https://www.eff.org/files/2017/06/27/isp_letter_to_fcc_on_nn_privacy_title_ii.pdf)).

<sup>8</sup> Open Letter from Creators for Net Neutrality to Chairman Pai and Members of Congress (<https://internetcreatorsguild.com/net-neutrality>).



who most need it, while providing flexibility for new business models and innovations that continue to enter the marketplace. We once again urge you to remove your order from the December agenda as soon as possible and strongly reconsider any other attempts to reverse net neutrality protections.

Sincerely,



Anna G. Eshoo  
Member of Congress



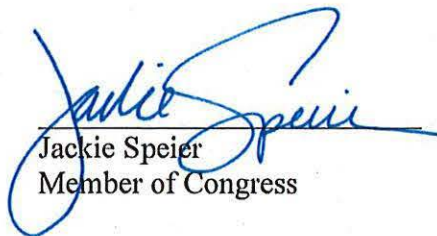
John Garamendi  
Member of Congress



Jared Huffman  
Member of Congress



Ro Khanna  
Member of Congress



Jackie Speier  
Member of Congress



Mike Thompson  
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

May 24, 2018

The Honorable Jackie Speier  
U.S. House of Representatives  
2465 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congresswoman Speier:

Thank you for your letter regarding the *Restoring Internet Freedom Order*, which reestablished the authority of the Federal Trade Commission to oversee the network management practices of Internet service providers while returning to the light-touch legal framework that governed such practices for almost twenty years.

At the dawn of the commercial Internet in 1996, President Clinton and a Republican Congress agreed that it would be the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation.” This bipartisan policy worked. Encouraged by light-touch regulation, the private sector invested over \$1.5 trillion to build fixed and mobile networks throughout the United States. Innovators and entrepreneurs grew startups into global giants. America’s Internet economy became the envy of the world.

Then, in early 2015, the FCC jettisoned this successful, bipartisan approach to the Internet and decided to subject the Internet to utility-style regulation designed in the 1930s to govern Ma Bell. This decision was a mistake. For one thing, there was no problem to solve. The Internet wasn’t broken in 2015. We weren’t living in a digital dystopia. To the contrary, the Internet had been a stunning success.

Not only was there no problem, this “solution” hasn’t worked. The main complaint consumers have about the Internet is not and has never been that their Internet service provider is blocking access to content. It’s that they don’t have access at all or enough competition between providers. The 2015 regulations have taken us in the opposite direction from these consumer preferences. Under Title II, annual investment in high-speed networks declined by billions of dollars—the first time that such investment has gone down outside of a recession in the Internet era. And our recent Broadband Deployment Report shows that the pace of both fixed and mobile broadband deployment declined dramatically in the two years following the *Title II Order*.

Returning to the legal framework that governed the Internet from President Clinton’s pronouncement in 1996 until 2015 is not going to destroy the Internet. It is not going to end the Internet as we know it. It is not going to undermine the free exchange of ideas or the fundamental truth that the Internet is the greatest free market success story of our lifetimes.

By returning to the light-touch Title I framework, we are helping consumers and promoting competition. Broadband providers will have stronger incentives to build networks, especially in unserved areas, and to upgrade networks to gigabit speeds and 5G. This means

there will be more competition among broadband providers—not only in our largest cities but also in the towns and farms and ranches that make up the American heartland. It also means more ways that companies of all kinds and sizes can deliver applications and content to more users. In short, it's a freer and more open Internet.

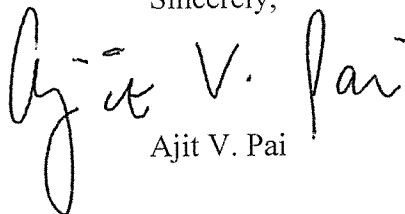
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I appreciate your interest in this matter. Your views are important and will be entered into the record of the proceeding. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

May 24, 2018

The Honorable Rohit Khanna  
U.S. House of Representatives  
513 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Khanna:

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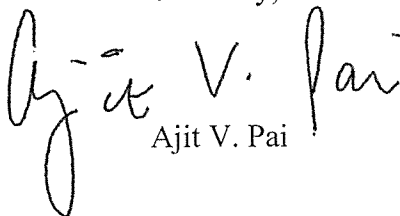
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Moreover, we reestablish the Federal Trade Commission's authority to ensure that consumers and competition are protected. Two years ago, the *Title II Order* stripped the FTC of its jurisdiction over broadband providers by deeming them all Title II "common carriers." But now we are putting our nation's premier consumer protection cop back on the beat.

In sum, Americans will still be able to access the websites they want to visit. They will still be able to enjoy the services they want to enjoy. There will still be regulation and regulators guarding a free and open Internet. This is the way things were prior to 2015, and this is the way they will be in the future.

I appreciate your interest in this matter. Your views are important and will be entered into the record of the proceeding. Please let me know if I can be of any further assistance.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

May 24, 2018

The Honorable Anna G. Eshoo  
U.S. House of Representatives  
241 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for your letter regarding the *Restoring Internet Freedom Order*, which reestablished the authority of the Federal Trade Commission to oversee the network management practices of Internet service providers while returning to the light-touch legal framework that governed such practices for almost twenty years.

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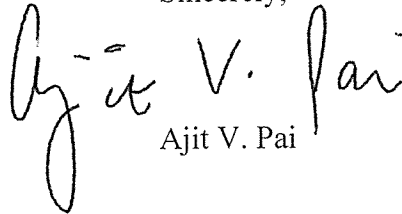
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

May 24, 2018

The Honorable Jared Huffman  
U.S. House of Representatives  
1406 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Huffman:

Thank you for your letter regarding the *Restoring Internet Freedom Order*, which reestablished the authority of the Federal Trade Commission to oversee the network management practices of Internet service providers while returning to the light-touch legal framework that governed such practices for almost twenty years.

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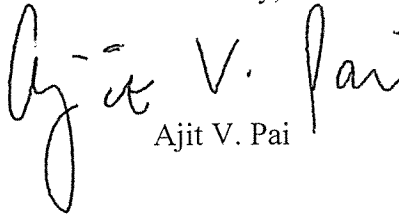
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Ajit V. Pai





FEDERAL COMMUNICATIONS COMMISSION  
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OFFICE OF  
THE CHAIRMAN

May 24, 2018

The Honorable John Garamendi  
U.S. House of Representatives  
2438 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Garamendi:

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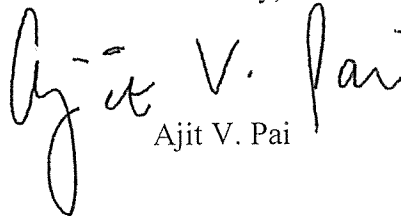
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Ajit V. Pai



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THE CHAIRMAN

May 24, 2018

The Honorable Mike Thompson  
U.S. House of Representatives  
231 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Thompson:

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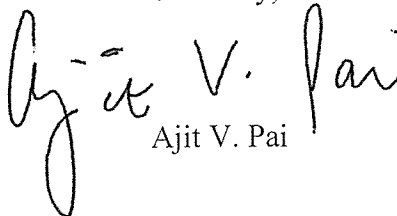
The *Restoring Internet Freedom Order* also promotes more robust transparency among ISPs than existed three years ago. It requires ISPs to disclose a variety of business practices, and the failure to do so subjects them to enforcement action. This transparency rule will ensure that consumers know what they're buying and that all startups—whether located in Silicon Valley or the Silicon Holler, in Kansas City or Diller, Nebraska—get the information they need as they develop new products and services.

Moreover, we reestablish the Federal Trade Commission's authority to ensure that consumers and competition are protected. Two years ago, the *Title II Order* stripped the FTC of its jurisdiction over broadband providers by deeming them all Title II "common carriers." But now we are putting our nation's premier consumer protection cop back on the beat.

In sum, Americans will still be able to access the websites they want to visit. They will still be able to enjoy the services they want to enjoy. There will still be regulation and regulators guarding a free and open Internet. This is the way things were prior to 2015, and this is the way they will be in the future.

I appreciate your interest in this matter. Your views are important and will be entered into the record of the proceeding. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part. Below the signature, the name "Ajit V. Pai" is printed in a standard, sans-serif font.

Ajit V. Pai